

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEE FAMILY INVESTMENTS, by and through
its Trustee W.B. LEE, Derivatively and on behalf
of Nominal Defendant WASHINGTON
MUTUAL, INC.,

Plaintiff,

v.

KERRY K. KILLINGER, THOMAS W. CASEY,
DEANNA W. OPPENHEIMER, ANNE V.
FARRELL, STEPHEN E. FRANK, PHILLIP D.
MATTHEWS, MICHAEL K. MURPHY,
MARGARET OSMER MCQUADE, MARY E.
PUGH, WILLIAM G. REED, JR., JAMES H.
STEVEER, WILLIS B. WOOD, JR.,

Defendants,

And

WASHINGTON MUTUAL, INC.,

Nominal Defendant.

CASE NO.: C05-2121-JCC

STIPULATION AND [PROPOSED]
ORDER OF DISMISSAL WITHOUT
PREJUDICE

1 The parties to the above-captioned litigation hereby stipulate as follows:

2 WHEREAS, plaintiff has brought this litigation derivatively on behalf of nominal
3 defendant Washington Mutual, Inc.;

4 WHEREAS, on September 26, 2008, Washington Mutual, Inc. filed a voluntary
5 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware, *In re*
6 *Washington Mutual, Inc.*, Case No. 08-cv-12229-MFW (*see* Notice of Automatic Stay as to
7 Washington Mutual, Inc. (Dkt. 37));

8 WHEREAS, the debtor-in-possession has exclusive standing to assert a cause of action
9 belonging to the bankruptcy estate (*Pepper v. Litton*, 308 U.S. 295 (1939); *Delgado Oil Co., Inc.*
10 *v. Torres*, 785 F.3d 857 (10th Cir. 1986); *In re: RNI Wind Down Corp.*, 348 B.R. 286 (Bkrcty. D.
11 Del. 2006));

12 WHEREAS, the debtor-in-possession has declined to assign the cause of action to
13 plaintiff, thereby depriving plaintiff of standing to pursue this litigation and depriving this Court
14 of subject matter jurisdiction to entertain the claims asserted herein.

15 THEREFORE, the parties, by and through their attorneys, hereby **STIPULATE AND**
16 **AGREE**, subject to approval of the Court, that the above-captioned litigation is dismissed as to
17 all parties, without prejudice, for lack of subject matter jurisdiction, without fees or costs to any
18 party.

19 Dated: November 18, 2009

20 s/ John W. Wolfe
21 John W. Wolfe, WSBA #8028
22 **WOLFE, WRENN & ZARISKI**
23 Two Union Square
24 601 Union Street, Suite 5110
25 Seattle, WA 98101
26 Telephone: (206) 467-9088
27 Facsimile: (206) 447-9378
Email: jwolfe@jwwolfelaw.com

*Attorneys for Nominal Defendant Washington
Mutual, Inc.*

1 Dated: November 18, 2009

2 s/ Barry M. Kaplan
3 Barry M. Kaplan, WSBA #8661
4 Douglas W. Greene, WSBA #22844
5 **WILSON SONSINI GOODRICH & ROSATI**
6 Professional Corporation
7 701 Fifth Avenue, Suite 5100
8 Seattle, WA 98104-7036
9 Telephone: (206) 883-2500
10 Facsimile: (206) 883-2699
11 Email: bkaplan@wsgr.com
12 Email: dgreene@wsgr.com

13 *Attorneys for Defendant*
14 *Kerry K. Killinger*

15 Dated: November 18, 2009

16 s/ Ronald L. Berenstein
17 Ronald L. Berenstein, WSBA #7573
18 **PERKINS COIE LLP**
19 1201 3rd Avenue, Suite 4800
20 Seattle, WA 98101-3099
21 Telephone: (206) 359-8477
22 Facsimile: (206) 359-9000
23 Email: rberenstein@perkinscoie.com

24 *Attorneys for Defendants*
25 *Anne V. Farrell, Stephen E. Frank, Phillip D.*
26 *Matthews, Michael K. Murphy, Margaret*
27 *Osmer McQuade, Mary E. Pugh, William G.*
Reed, Jr., James H. Stever and Willis B. Wood,
Jr.

18 Dated: November 18, 2009

19 s/ Stephen M. Rummage
20 Stephen M. Rummage, WSBA #11168
21 Steven P. Caplow, WSBA #19843
22 **DAVIS WRIGHT TREMAINE, LLP**
23 1201 3rd Ave., Ste 2200
24 Seattle, WA 98101-3045
25 Telephone: (206) 757-8018
26 Facsimile: (206) 757-7018
27 Email: steverummage@dwt.com
Email: stevencaplow@dwt.com

Attorneys for Defendant
Thomas W. Casey

1 Dated: November 18, 2009

2 s/ Cyrus R. Vance, Jr.
3 Cyrus R. Vance, Jr., WSBA #
4 **MORVILLO ABRAMOWITZ GRAND IASON &**
5 **SILBERBERG, PC**
6 565 Fifth Avenue, 9th Floor
7 New York, NY 10017
8 Telephone: (212) 880-9490
9 Facsimile: (212) 856-9494
10 Email: cvance@maglaw.com

11 *Attorneys for Defendant*
12 *Deanna W. Oppenheimer*

13 Dated: November 18, 2009

14 s/ Jess Gilbert Webster
15 Jess Gilbert Webster, WSBA #11402
16 **MIKKELBORG BROZ WELLS & FRYER**
17 1001 4th Avenue, Suite 3600
18 Seattle, WA 98154-1115
19 Telephone: (206) 623-5890
20 Facsimile: (206) 623-0965
21 Email: jgwebster@mikkelborg.com

22 - and -

23 William B. Federman
24 **FEDERMAN & SHERWOOD**
25 10205 N. Pennsylvania Ave.
26 Oklahoma City, OK 73102
27 Telephone: (405) 235-1560
Email: wbf@federmanlaw.com

Attorneys for Plaintiff
Lee Family Investments, by and through its
Trustee W.B. Lee, Derivatively and on behalf of
Nominal Defendant Washington Mutual, Inc.

Pursuant to the parties' stipulation, **IT IS HEREBY ORDERED** that:

1. The above-captioned litigation is dismissed as to all parties, without prejudice, for lack of subject matter jurisdiction, without fees or costs to any party; and

2. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

DATED this __ day of _____ 2009.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ronald L Berenstein
rberenstein@perkinscoie.com

Steven P Caplow
stevenaplow@dwt.com

William B Federman
wbf@federmanlaw.com

Douglas W Greene
dgreene@wsgr.com

Barry M Kaplan
bkaplan@wsgr.com

Stephen M. Rummage
steverummage@dwt.com

Cyrus R Vance , Jr
cvance@maglaw.com

Jess Gilbert Webster
jgwebster@mikkelborg.com

Dated: November 18, 2009

s/ Barry M. Kaplan
Barry M. Kaplan, WSBA# 8661